

MAR 31 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JIABAO LIU,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-71648

Agency No. A095-311-270

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 18, 2009^{**}

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Jiabao Liu, a native and citizen of China, petitions pro se for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for asylum, withholding of removal,

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and protection under the Convention Against Torture (“CAT”). We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for substantial evidence, *Singh-Kaur v. INS*, 183 F.3d 1147, 1149 (9th Cir. 1999), and we deny the petition for review.

Substantial evidence supports the IJ’s adverse credibility determination based upon Liu’s memory lapses and unresponsive testimony, *see id.* at 1151, Liu’s inability to explain Falun Gong exercise movements, *see Singh v. Ashcroft*, 367 F.3d 1139, 1143 (9th Cir. 2004), and Liu’s omission from his initial testimony that he was subject to electrical shock during his detention, *see Li v. Ashcroft*, 378 F.3d 959, 962-64 (9th Cir. 2004). Because the record does not compel the conclusion that Liu’s testimony was credible, he has not established eligibility for asylum. *See Singh-Kaur*, 183 F.3d at 1153.

Because Liu failed to demonstrate eligibility for asylum, it follows that he did not satisfy the more stringent standard for withholding of removal. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Because Liu’s CAT claim is based on the same testimony the IJ found to be not credible, and Liu points to no other evidence the IJ should have considered, he has failed to establish eligibility for CAT relief. *See id.* at 1157.

PETITION FOR REVIEW DENIED.